

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA v. ABDUL IBRAHIM WEST, JAMAAL BLANDING, JAMEEL HICKSON, RICHARD CHASE HOOVER, DONTENZ STEWART, AMIR BOYER, DARYL BAKER, HANS GADSON, DENNIS HARMON	CRIMINAL ACTION NO. 18-249
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MEMORANDUM RE: ATTORNEY CONFLICT OF INTEREST

Baylson, J.

March 15, 2019

In this criminal case involving allegations of conspiracy to distribute controlled substances, the Government has filed a Motion to disqualify an attorney, Edward Meehan Esq., from his representation of Abdul West. The Government asserts that the conflict arises out of Meehan’s prior representation of several of West’s co-defendants, including in relevant part Dennis Harmon and Dontez Stewart.¹

With regard to the three defendants at issue in this matter, the indictment alleges that West was the leader of the drug trafficking organization (ECF 15 at ¶ 1), that Harmon was, along with others, “responsible for staying with and protecting controlled substance supplies kept at the various residences owned and maintained by West and others” (*Id.* at ¶ 11), and that Stewart, along with others, distributed controlled substances in and around Philadelphia (*Id.* at ¶ 10).

Following a pre-trial hearing on February 19, 2019, we issued an order that the

¹ The Government also states that there is a conflict of interest resulting from Meehan’s prior representation of Amir Boyer and Daryl Baker. (ECF 98 at 1.) As discussed on the call on January 17, 2019, the Court does not find this prior representation material as it was over ten years ago, in 2005 and 2008.

Government's motion to disqualify Meehan is denied. This memorandum further explains that conclusion.

I. The Government's Motion to Disqualify Meehan

The Government filed its "Motion for a hearing regarding attorney conflicts of interest" on December 6, 2018. (ECF 98.) In that memorandum, the Government outlined its position that Meehan faced conflicts of interest because of his current and former representation of other defendants in this case.

The Government argues that Meehan is conflicted because of his prior representation of Harmon in a state case for possession with intent to distribute ("PWID") controlled substances on September 11, 2017 at 3234 Sydenham Street. (ECF 98 at 6.) This address is named in the superseding indictment as one of the properties from which the drug trafficking operation was managed. (Indictment, ECF 16 at ¶ 2.) The charges in that state case were adopted in the superseding indictment, and West and Harmon are now both charged with PWID narcotics found at the Syndenham address on September 11, 2017. (ECF 98 at 6.)

The Government also argues that Meehan is conflicted because of his representation of Stewart in a gun case currently pending before the Philadelphia Court of Common Pleas. At argument on December 13, 2018, Meehan stated that he withdrew from that case on December 4, 2018 because "the Government was filing a motion as far as my representation of Mr. West, and I've represented Mr. West for a number of years now," and "because the [gun] case had been consolidated with a murder case involving that gun. So Mr. Mandell was already representing [Stewart] on the murder case." (12/13/18 Tr., ECF 138 at 15:2-7.)

The Government contends that this prior representation would cause Meehan's loyalties to "be so deeply divided between his current and former clients that he could not conform with

the Rules of Professional Conduct, and thus disqualification would be warranted.” (ECF 98 at 9.)

Over the following two months, the Government filed two supplementary memoranda. (ECF 126 & 132.) Among other things, the Government argued that a statement by Meehan at the December 13, 2018 hearing that West asked him to speak with Harmon makes Meehan a potential witness to the conspiracy. (ECF 126 at 6-9.) The Government later clarified on a telephone call that it is “not suggesting in any way that Mr. Meehan was part of this conspiracy or has done anything untoward or unprofessional. (12/13/19 Tr. at 6:22-24.)

II. Procedural History

Upon receipt of the Government’s request for a hearing on this matter, the Court heard argument from the Government and Meehan on December 13, 2018. The Court entered into a colloquy of West, where West stated his understanding of the potential conflict and his intention to continue with Meehan’s representation. (12/13/18 Tr. at 8:9-10:5.) Ann Flannery, Esq. counsel for Harmon, was present and was directed to determine if Harmon intended to waive his conflict. Such a waiver was provided to the Court on January 11, 2018. (ECF 124.)

On a recorded telephone conference on January 17, 2018, the Court discussed with the parties the need for a waiver from Stewart. The Court also took Government counsel’s suggestion that West consult with a conflict-free counsel and on February 5, 2019, appointed Jonathan Feinberg, Esq. to meet with and advise West of the potential conflict of interest with his chosen counsel.

On February 12, 2019, the Court held hearing at the request of Stewart’s counsel, Trevan Borum, Esq. A portion of this hearing was on the record with the Government present, a portion was off the record without the Government, and a portion was off the record with only the government present. A summary of this hearing is filed in a separate sealed memorandum.

Stewart did not provide a waiver of any potential conflict.

On February 15, 2019, the Court held a hearing where it entered into second colloquy with West, and Meehan and Feinberg were present. The Court asked questions of West and Meehan, particularly about Meehan's former representation of Stewart in the gun case, and what information Meehan may have obtained during that representation. The Court explained in detail to West the potential conflicts that might arise. West replied that he understood all the risks but wanted Meehan to represent him. West was given an opportunity to speak independently with both Meehan and Feinberg.

III. Report of conflict-free counsel

Feinberg filed two reports on February 19, 2019 as directed by the Court—one is public (ECF 147) and one is sealed (ECF 148). In the public report, Feinberg explained that he met with West twice—once at the Federal Detention Center and once during the February 15, 2019 hearing—and “provided Mr. West with my professional opinion as to the potential impacts of Mr. Meehan's continued service as his counsel arising out of conflicts of interests presented by Mr. Meehan's past representation of his co-defendants.” (ECF 147 at 1.) He further explained

During both encounters, Mr. West has informed me that he wishes for Mr. Meehan to remain as his counsel and that he is willing to waive the right to challenge any future conviction based on Mr. Meehan's conflicts of interest. I believe that Mr. West understands the nature of the conflicts of interest, that he appreciates the risks associated with Mr. Meehan's continued representation, and that he is knowingly and voluntarily waiving the right to assert that a conflict of interest prejudiced his right to the effective assistance of counsel.

(Id.)

The day Feinberg's report was filed, the court held a pretrial conference and ruled that upon consideration of Feinberg's report, the filings and the testimony, the Court would reject the

government's request to disqualify Meehan from representing West.

IV. Discussion

We begin our analysis with a recognition of a presumption in favor of a defendant's choice of counsel. U.S. CONST. amend. VI. This presumption "may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict. The evaluation of the facts and circumstances of each case under this standard must be left primarily to the informed judgment of the trial court." Wheat v. United States, 486 U.S. 153, 164 (1988).

We must weigh on one hand the client's Sixth Amendment right to counsel of their choosing with, on the other hand, their right to effective representation within the professional conduct rules. Id. at 158-59. Ultimately, the district court "must be allowed substantial latitude in refusing waivers of conflicts of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict of interest exists which may or may not burgeon into an actual conflict as the trial progresses." Id. at 163.

The first determination, therefore, is whether an actual conflict exists. "Actual conflict of interest is evidenced if, during the course of the representation, the defendants' interests diverge with respect to a material factual or legal issue or to a course of action." Sullivan v. Cuyler, 723 F.2d 1077, 1086 (3d Cir. 1983) In Sullivan, the Third Circuit affirmed a district court's issuance of a writ of habeas corpus after it found that an actual conflict existed as a result of dual representation in a criminal case. That opinion came after the Supreme Court vacated an earlier decision that found only a potential conflict of interest: "We hold that the possibility of conflict is insufficient to impugn a criminal conviction. In order to demonstrate a violation of his Sixth Amendment rights, a defendant must establish that an actual conflict of interest adversely

affected his lawyer's performance.” Cuyler v. Sullivan, 446 U.S. 335, 350 (1980). The Court may disqualify an attorney even if there is a potential for conflict but no actual conflict. Wheat, 486 U.S. at 163.

Should we find that an actual conflict exists, we must examine whether it is possible for all affected clients to waive their right to conflict-free counsel. Wheat v. United States, 486 U.S. 153, 162 (1988) (“[W]here a court justifiably finds an actual conflict of interest, there can be no doubt that it may decline a proffer of waiver, and insist that defendants be separately represented.”) Waivers that have been obtained after advice from independent (non-conflicted) counsel are best. See United States v. Massimino, 832 F. Supp. 2d 510 (E.D. Pa. 2011) (Robreno, J.)

Although there is some potential for a conflict in this case, the Court concludes it is minimal, is understood by West, and is not serious enough to disqualify Meehan. By way of example, and as discussed during West’s second colloquy on February 15, 2019, Meehan may be limited in his ability to properly advise West regarding his potential government cooperation, if doing so would potentially injure one of Meehan’s former clients. Meehan may also be limited in his ability to cross examine his former clients should one or more of them decide to cooperate with the government and take the stand as a witness against West. Even if they do not cooperate, one or more of Meehan’s former clients may testify against West, putting Meehan in the position of cross-examining his former clients. West understands the possible limits on Meehan. There is, however, no actual conflict of interest presently in Meehan’s representation.

We conclude that this potential for conflict is waivable, and that West’s waiver of the potential conflict was knowing and voluntary. In both colloquies before this court and West’s two consultations with conflict-free counsel, West has stated in open court that he understands

the ways the potential conflict could play out at trial and remains steadfast in his desire to have Meehan represent him. West has stated that he understands that the potential conflict that has been waived by Harmon. Although Stewart did not make a waiver, West has also stated he understands that there may be restrictions on Meehan's ability to cross-examine Harmon and Stewart because of his prior representation of them. Nevertheless, West has repeatedly told the Court that he wants Meehan as his lawyer. We conclude this was a valid waiver of the potential conflict of interest.

We are not persuaded by the Government that Meehan could properly be called as a witness to the conspiracy. In United States v. Fumo, the Government attempted to disqualify Defendant's attorneys because the attorneys were alleged "witnesses to the events relevant to the charges on the indictment." 504 F. Supp. 2d 6, 30 (E.D. Pa. 2007) (Yohn, J.) Judge Yohn concluded that situation in that case did not rise to the level of conflicts requiring disqualification as outlined in leading Third Circuit cases: United States v. Merlino, 349 F.3d 144 (3d Cir. 2003) and Gov't of Virgin Islands v. Zepp, 748 F.2d 125 (3d Cir. 1984). Fumo, 504 F. Supp at 33.

In Merlino, the attorney for defendant he had gone to visit a cooperating witness in prison, and in an attempt to persuade him not to testify, gave the witness a letter from his client stating that the mob did not intend to kill him, and offered the witness money for his commissary. Merlino, 349 F.3d at 151. The district court had disqualified the attorney, noting that the defendant was employing a "mob denial" defense at trial, and that the attorney's visit to the witness was being presented to rebut that defense. Id. at 152. The Third Circuit affirmed the disqualification. Id. In Zepp, the Third Circuit found that a defendant's Sixth Amendment rights were violated when her attorney entered a statement that was proffered as evidence for the government. 748 F.2d at 127. The attorney had arrived at the defendant's home moments after

her arrest, closed the door to speak with defendant, and then officers heard a number of toilet flushes. The statement by the attorney was that he did not flush any toilets, and the Third Circuit noted that his “interest in testifying on his own behalf impaired the exercise of independent judgment on behalf of his client.” Id. at 138.

As in Fumo, the potential conflict of interest at issue here does not rise to the level of being non-waivable. In both Merlino and Zepp, attorneys were involved in the underlying offense. There is no such allegation against Meehan. It would be improper for Meehan to be called as a witness in this case based upon his statement in court that West asked Meehan to visit his friend in jail.

V. Conclusion

Given the significant amount of discretion the Court has in this area, and the fact that disqualification of Meehan would give West a possible successful argument on appeal to void any conviction of West by the jury, we conclude that West has knowingly and voluntarily waived his right to conflict-free counsel. We therefore deny Government’s request that we disqualify Meehan from representing West in this case.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON
United States District Court Judge